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Copyrights — Infringement. *Continental Casualty Company v. Beardsley, 253 F. 2d 702 (2d Cir. 1958).* Defendant insurance broker developed a system for insuring against the loss of securities by means of a blanket bond. This system was published in a six page pamphlet which contained a copyright notice. Plaintiff insurance company brought a declaratory judgment proceeding to have the copyright on three pages of the pamphlet judged invalid. The material in question sets forth certain insurance forms to be used in the implementation of defendant's plan. The District Court held such insurance forms were not properly copyrightable and that even if they were, there was no infringement.

In reversing the District Court's finding as to the copyrightability of the matter in question, the Circuit Court distinguished the present case from *Baker v. Selden,* 101 U.S. 99 (1879). In the *Selden* case the Supreme Court upheld a copyright on an explanation of an accounting system but refused to permit the copyrighting of the system itself. In the present case the explanation of the system was incorporated in the forms themselves and thus the system and explanation were inseparable. Assuming the copyrightability of such forms, the question of the amount of protection to be given remains. In the fields of commerce and insurance great latitude is allowed in permitting others to use almost the specific language of copyrighted documents without holding that an infringement has occurred.

The primary consideration of the court in determining how much similarity of language is to be allowed turns on the probable effect which the copyright would have on the public's use of the idea beneath it. If the effect of prohibiting similarity of language would be to give the copyright owner a monopoly on his ideas, and thus to prevent the public from using the idea, then the cases uniformly deny protection to the copyright holder. *Dorsey v. Old Surety Life Ins. Co.,* 98 F. 2d 872 (1st Cir. 1938), *Crume v. Pacific Mut. Life Ins. Co.,* 140 F. 2d 182 (7th Cir. 1944). If the public can easily utilize the idea beneath the copyrighted language without resorting to repeating it, the copyright holder will, of course, be protected. In the present case, although the Court held defendant's copyright valid, it ruled plaintiff had not infringed it by using similar language. The Court went on to state that the defendant had

lost his copyright through a subsequent general publication. Thus it is apparent that one may possess a perfectly valid copyright on a documented form where the explanation of a copyrighted system is embodied in the form, and yet receive little or no protection against others who adopt similar language in their forms.

Criminal Law — Mandamus — Lifting Of Detainer. *Baker v. Marbury, 216 Md. 572, 141 A. 2d 523 (1958).* Appellant was confined in a federal penal institution in Virginia before he could be tried by a Maryland state court on the charge of breaking into a storehouse. Prior to his being incarcerated appellant had been indicted by the grand jury of Prince George's County, Maryland, and after his incarceration in the federal reformatory, the Prince George's County Sheriff placed a detainer against him with the federal penal authorities. In the present proceeding appellant requested the Chief Judge of the Seventh Judicial Circuit of Maryland to issue a writ of *mandamus* directing a Circuit Court Judge of Prince George's County to lift said detainer. In affirming the lower court's rejection of this request the Court of Appeals held that the Circuit Court lacked authority to cause a sheriff either to place or lift the detainer. The Court, in commenting upon the lower court's ruling in an earlier *habeas corpus* proceeding which appellant had brought, stated that no Maryland judge could require the federal penal authorities either within or outside this state to produce the prisoner for trial in a Maryland state court.

In ruling on defendant's contention that he was being denied a speedy trial by the Circuit Court for Prince George's County, the Court of Appeals found that the defendant had failed to show negligent or deliberate delay on the part of the State in pressing the prosecution. The Court distinguished the present case from the case of *Petition of Provoo,* 17 F.R.D. 183 (1955), affirmed without opinion, 350 U.S. 857 (1955), by pointing out that the undue delay was found there because of the deliberate and improper choice of venue by the U.S. government which was held to have resulted therein. Despite this finding, the Court seemed to leave the question of any possible future delay for future determination, when it quoted with approval the following remarks made by Chief Judge Gray in the lower court's opinion, namely: ". . . when the case is ready for trial a decision can then be made as to whether the defendant should be required to stand trial" [575].

The right of an incarcerated person to demand a speedy trial is discussed in *Harris v. State*, 194 Md. 288, 71 A. 2d 36 (1950). There the court noted that the right to a speedy trial was a personal right which could be lost by the failure to demand it. In this instance the failure of a prisoner to demand a speedy trial rendered the guarantee of a speedy trial, pursuant to Article 21 of the Maryland Declaration of Rights and of the Sixth Amendment to the United States Constitution, inapplicable. The court stated the Maryland view in the *Harris* case when it said:

> ". . . we adopt the rule that in a case like the one before us it is the duty of the incarcerated person to demand a speedy trial of an indictment pending against him in any of the courts of this State, and if he fails to demand such a trial he waives his right to a speedy trial" [297]. See also 118 A.L.R. 1037; 22 C.J.S. Criminal Law 726, 727, Sec. 472.

Taxation — Subjection Of Reserved Life Estates To Inheritance Tax. *Register of Wills v. Blackway, 217 Md. 1, 141 A. 2d 713 (1958).* Four parcels of land were conveyed to plaintiff by his 92 year old stepfather and his 86 year old mother in consideration of which plaintiff was to take care of said grantors until their death. By the deed of conveyance the grantors reserved life estates in the land in themselves. Defendant Register of Wills contended that this conveyance was subject to the collateral inheritance tax on real estate. Defendant relied upon MD. CODE (1951) Art. 81, §150 [now 7 MD. CODE (1957) Art. 81, §151] which imposes an inheritance tax on "all tangible or intangible property, real or personal, passing either by will or under the intestate laws of this State, or by deed, gift, grant, bargain or sale, made in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of a decedent, ..." The Court of Appeals affirmed the lower Court's judgment that the transfer in question was exempt from the inheritance tax set forth in the above Code section. Plaintiff maintained that the transfers of property were exempt from said inheritance tax on the ground that the transfers came within an implied exemption extended to cover transfers from a decedent which had been "executed pursuant to a binding agreement in which an adequate and valuable consideration has passed to the decedent in an amount equal in value to the property transferred".

In holding that this transfer fell within the specified exemption the Maryland Court of Appeals quoted 25 Op. Atty. Gen. 678 (1940) which set forth the requisites necessary for application of the exemption, *i.e.*, the transfer must be made in fulfillment of a binding contractual obligation, based on a consideration reasonably commensurate with the value of the property transferred and the consideration must be received or enjoyed by the decedent during his lifetime [9]. In addition to these requirements the agreement or contract must be clearly established or defined. Plaintiff's mother died within 2 years after the plaintiff commenced caring for his parents. The property transferred by decedents was appraised at about $14,600. Defendant contends that 2 years care of decedents is not an adequate consideration within the meaning of the requirements set forth in the exemption. The Court of Appeals ruled that the consideration was "reasonably commensurate with the value of the property transferred" by holding that the evaluation date of the consideration was the date of the agreement for transfer and not the date of the deaths of the grantors. This finding was largely based upon implications drawn from 30 Op. Atty. Gen. 229 (1945), 31 Op. Atty. 247 (1946), and 31 Op. Atty. Gen. 262 (1946), in the latter of which the assumption of contingent liability as accommodation parties on a note by transferees of property from a decedent was regarded as a consideration commensurate with the value of the property transferred and therefore within the tax exemption.

See 85 C.J.S., Taxation 913, 914, Sec. 1147 (1), 28 AM. JUR., Inheritance, Estate and Gift Taxes, 97, Sec. 183 and 99 A.L.R. 949, 951.

Taxation — Willful Failure To Pay Federal Income Tax. *United States v. Palermo, 58-2 U.S.T.C. ¶9850 (3rd Cir. 1958).* Defendant was convicted in a California District Court of willfully failing to pay his federal income tax on time, although he had filed his income tax returns promptly. The Court found as a special finding of fact pursuant to Federal Rules of Criminal Procedure, Rule 23(c), 28 U.S.C.A. (1958) 146, that defendant's failure to pay his tax on time was "willful" within the meaning of INTERNAL REVENUE CODE of 1939, Sec. 145(a) and INTERNAL REVENUE CODE of 1954, Sec. 7203. These sections provide for imposition of a fine and/or imprisonment for anyone who "willfully fails to pay" his federal income tax on time. The District Court's finding of "willfulness" was based largely on

the fact defendant had failed to pay his income tax on time for nine consecutive years, and that during this time defendant made luxury expenditures at times when he was in default on his income tax. The District Court stated that where a man has knowingly and intentionally defaulted in paying his income tax for nine times in succession "the conclusion is inescapable, in the absence of any substantial evidence to the contrary, that this series of defaults arose from an evil motive". *United States v. Palermo,* 157 F. Supp. 578, 582 (E.D. Pa. 1957). The Circuit Court of Appeals rejected the lower court's finding on the ground that the District Court used improper legal criteria in making its determination that defendant's conduct constituted "willfulness" within the meaning of the statute. The District Court had relied upon part of a definition set forth in *United States v. Murdock,* 290 U.S. 389 (1933), where the Supreme Court talked of willfulness as denoting an act done "without justifiable excuse . . ., stubbornly, obstinately, perversely, . . ." [394]. The Court of Appeals based its decision on previous definitions of willfulness set forth in *Spies v. United States,* 317 U.S. 492 (1943) and *United States v. Martell,* 199 Fed. 2d 670 (3rd Cir. 1952), *cert. den.* 345 U.S. 917 (1953), which emphasized the "evil motive" aspect of willfulness.

Adopting a somewhat limited definition of willfulness, the Appellate Court stated:

> "Willfulness is an essential element of the crime proscribed by §145(a). It requires the existence of a specific wrongful intent — an evil motive — at the time the crime charged was committed; viz, failure to pay the tax due at the time required by law. A series of defaults, indicating a pattern of behavior, knowingly and intentionally made, may suggest the existence of the specific 'evil motive'. Mere laxity, careless disregard of the duty imposed by law or even of gross negligence unattended by 'evil motive' are not probative of 'wilfulness'." [p. 69, 495].

It thus becomes apparent that the taxpayer who continually fails to pay his federal income tax on time will be given the benefit of the doubt in all but the most incriminating of circumstances.

Torts — Assumption Of Risk. *Lee v. National League Baseball Club of Milwaukee, 4 Wis. 2d 168, 89 N.W. 2d 811 (1958).* Plaintiff, a 69 year old woman, bought a seat in an

unscreened part of the grandstand for a baseball game in Milwaukee County Stadium. Plaintiff sustained injuries when she was pushed off her chair and trampled upon by other spectators, who were attempting to recover a foul ball. Defendant contends inter alia that the plaintiff assumed the risk of injury through collisions with foul ball seeking spectators by purchasing her seat in the unscreened portion of the stadium. The appellate court affirmed the lower court's ruling that the evidence presented a question of fact whether the plaintiff assumed the risk of injury by voluntarily accepting a seat in the area of the park which was unprotected by screens.

The Court, while recognizing the doctrine of voluntary assumption of a known risk, noted that the only risks that a patron of a baseball game assumes are those risks of danger which are a matter of common knowledge to the patron. The Court also recognized the line of cases which have held that a spectator who accepts a seat in an unscreened area of a ball park assumes the risk under ordinary circumstances of being injured by a batted ball. The present case was distinguished from these cases on the ground that the defendant maintained a staff of ushers, who the plaintiff might assume would prevent the type of rough-house tactics that occurred. This factor, coupled with the fact that no injuries had been sustained by any patron prior to the plaintiff's being injured, as the result of a foul ball scramble negatived the application of the assumption of risk doctrine. Defendant's negligence was predicated upon its removal of an usher who had been guarding the box seat where plaintiff was sitting just prior to the time that plaintiff sustained her injury.

The Court of Appeals of Maryland has not ruled on the extent to which a spectator assumes risk of injury at sporting events. *Gordon v. State Fair,* 174 Md. 466, 199 A. 519 (1938), appears to be the case most nearly in point. There a spectator at a race track was deemed to have assumed the risk when he stood up on a chair furnished by defendant and later was knocked off his chair by the crowd around him. See also 142 A.L.R. 868, 16 A.L.R. 2d 912, 20 A.L.R. 2d 8.

Torts — Imputed Contributory Negligence. *York v. Day's Inc., 140 A. 2d 730 (Me. 1958).* Plaintiff's less-than-eighteen-year-old son was driving plaintiff's automobile on a personal mission when his car collided with an automobile driven by defendant's servant. Plaintiff-bailor brought

suit against defendant to recover for damages to his car. Defendant asserted that the contributory negligence of plaintiff's bailee-son was imputable to plaintiff-bailor and thus barred his recovery. Although at common law a bailor-father is not liable for the negligence of his bailee-son while said bailee is engaged in a personal mission, a Maine statute provides that every owner of a motor vehicle permitting a minor under 18 years of age to operate it upon a highway shall be jointly and severally liable with such minor for any damage caused by the negligence of this minor. Defendant maintained that this statute not only imposed liability upon auto owners who allowed minors to operate their cars, but also imputed the contributory negligence of such minor-bailee to the motor vehicle owner so as to bar said owner from recovering damages from a negligent third person.

The appellate court in denying the imputability of the contributory negligence of plaintiff's son to the plaintiff, and thus upholding plaintiff's recovery, based its decision on the legislative intent of the Maine legislature in enacting the statute in question. The Court relied upon RESTATEMENT, TORTS (1934) Sec. 485, and the *caveat* to this section in its opinion. The RESTATEMENT imputes contributory negligence of a third person to a plaintiff where the plaintiff himself would be responsible at common law to others for the negligent acts of such third person; but in a *caveat* to this section the Institute expresses no opinion whether such contributory negligence may be imputed where a statute imposes vicarious liability for harm negligently caused to others by third persons for whose conduct said plaintiff would not at common law be responsible.

In construing the Maine statute strictly, since it is in derogation of the common law, the Court found that the statute's purpose was not to impute a driver's contributory negligence to bar the owner's recovery but merely to give to persons injured by the negligent operation of automobiles a better chance for effective recovery by making the registered owner take out insurance to cover his possible liability for his bailee's negligence.

In *Price v. Miller*, 165 Md. 578, 169 A. 800 (1934), the Maryland Court held that the negligence of a bailee of an automobile did not bar the recovery by the bailor from a third party whose negligence also contributed to the accident. This decision rested on the common law rule that the negligence of the driver of a car resulting in damage to a third party is not a proper basis for recovery against the

owner of the car, unless at the time of the accident the driver was the agent or servant of the owner engaged in the owner's or master's business.

In 1943, Maryland passed an imputability of negligence law similar to the Massachusetts statute; 6 MD. CODE (1957) Art. 66½, Sec. 93(b):

> "Any negligence of a minor under the age of twenty-one (21) years when driving a motor vehicle upon a highway in this State shall be imputed to the person who has signed the application of such minor for a permit or license, and that person shall be jointly and severally liable with such minor for any damages caused by such negligence . . . ."

Although the effect of this statute upon imputability of contributory negligence to a bailor has not yet been brought in issue, indications are that the *Price* rule is still in effect. In *Sklar v. Southcomb,* 194 Md. 626, 630, 72 A. 2d 11 (1950), the *Price* case was cited in some *dicta* to the effect that the contributory negligence of a bailee is still not imputable to the bailor in the absence of a master servant relationship. See 16 Md. L. Rev. 174 (1956).

Torts — Slander Publication. *Walter v. Davidson, 214 Ga. 187, 104 S.E. 2d 113 (1958).* Defendant, the president of a college of which the plaintiff was a student, allegedly uttered a slanderous statement directed toward the plaintiff in the presence of another faculty member. The remarks were supposedly spoken during the course of an investigation involving stealing in one of the college's dormitories. The party in whose presence these remarks were said to be made was a faculty member of said college assigned to student disciplinary problems. The appellate court held that even if defendant had uttered slanderous remarks and these remarks were heard by the faculty member present, no publication of the slander had taken place. The court reasoned that members of a college faculty charged with the maintenance of student discipline enjoy a privilege similar to that which a parent possesses in disciplinary actions involving his child.

See 78 A.L.R. 1182 for publication among members of a family.

Unauthorized Practice Of Law — Corporations. *State Bar Ass'n. of Conn. v. Connecticut Bank & T. Co., 145 Conn. 222, 140 A. 2d 863 (1958), 21 Conn. Supp. 42, 144*

A. 2d 347 (1958). Plaintiff sought a declaratory judgment determining that defendants' acts constitute the unlawful practice of the law, and an injunction restraining the same. The acts in question were: distribution of estate planning and estate taxation information to prospective customers; drafting and filing customers' petitions, accounts, and various other papers in probate court; preparation and filing customers' federal and state tax returns; dealing with examiners of the internal revenue service, and entering appearances and representing customers at probate court hearings.

The trial court found that in all but one of these activities, *i.e.,* defendants' representation of customers at probate hearings by persons not admitted to the bar, defendants had not committed acts which amounted to unlawful practice of the law, within the meaning of the Connecticut statute [CONN. GEN. ST. (1949), Secs. 7638, 7641]. On appeal the Supreme Court of Errors held that the trial court erred in concluding as a matter of law, that the practices complained of did not constitute the unlawful practice of law. This difference in the holdings of the lower and appellate courts stemmed from their respective views with regard to the Connecticut statutes governing the practice of law and those authorizing corporations to engage in trust work. The lower court held the latter statutes paramount. The appellate court held that defendants could engage in the trust business only if they observed the requirements of the statutes governing the practice of law, namely, that in carrying on what is "commonly understood to be the practice of law", on behalf of others, trust companies could only act through attorneys who were not employees of said trust companies. Further, that any attempt by the legislature to authorize corporations to practice law would be unconstitutional because violative of Connecticut's separation of powers of government.

On remand of the case, 21 Conn. Supp. 42, 144 A. 2d 347 (reprinted, Daily Record, Oct. 10, 1958), the lower court issued a sweeping injunction prohibiting the Trust Companies, their officers, employees, agents or servants from taking any steps in the administration of an estate where "the legal rights, liabilities or interests of any estate or trust or of any parties interested therein are to be adjudicated, defined, determined, compromised or settled by any decree, judgment, order or ruling of any Probate Court or of the state tax department or of the internal revenue service . . . ." [144 A. 2d 347, 352]. The matter is

again on appeal from this injunction to the Supreme Court of Errors of Connecticut.

Maryland has statutes similar to those of Connecticut with respect to the admission of attorneys and the practice of the law by persons not attorneys. 3 MD. CODE (1957) Art. 27, Sec. 14, and 1 MD. CODE (1957) Art. 10, Sec. 32. The former makes it unlawful for any corporation or voluntary association to solicit employment in connection with the furnishing of legal advice, services, or counsel of any kind whatsoever. It also forbids corporations to hold themselves out as competent of furnishing legal services. Art. 27, Sec. 14, excepts from its application:

> ". . . the business of examining and insuring titles to real property, or the collection or adjustment of mercantile claims in which a corporation or voluntary association may be lawfully engaged, nor to any insurance corporation or association defending the insured under a policy of insurance."

Only one Maryland case has arisen in this area. In *Rehm v. Coal Co.*, 169 Md. 365, 181 A. 724 (1935), Art. 10, Sec. 32, which makes it a criminal offense for a person who has not been admitted to the bar to receive reward for services as an attorney at law, and Sec. 33, which makes it a crime for one not a member of the bar to represent himself as entitled to practice, were held not to preclude a collection agency, acting as agent for the plaintiff in the People's Court, from signing the *praecipe* to which was attached an itemized statement of plaintiff's damages and also appearing in the People's Court and providing plaintiff's claim.

For a discussion of the problem, see 2 Md. L. Rev. 342; 73 A.L.R. 1327, 105 A.L.R. 342, 114 A.L.R. 1506, 157 A.L.R. 282; 5 AMERICAN JURISPRUDENCE, Attorneys at Law §§3, 17, 25; 5 LAW AND CONTEMP. PROBLEMS, 1-174 (1938); 16 Md. L. Rev. 352 (1956). *Cf.* "Statements Of Principles With Respect To The Practice Of Law Formulated By Representatives Of The American Bar Association And Various Business And Professional Groups", sections of which on "Collection Agencies", "Insurance Adjusters", and "Realtors" were reprinted in the Daily Record of October 7, October 27 and November 18, 1958.